

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

RASHEED SUTON BEYAH,	:	
	:	
Plaintiff,	:	No. 4:CV-05-1591
	:	
vs.	:	(Complaint filed 08/08/05)
	:	
C/O'S, LT'S, CAPT'S, MAJOR, SGT'S, DEPUTY'S SUPERINTENDENT, and GRIEVANCE COORDINATOR'S,	:	(Judge Muir)
	:	
Defendants	:	(Magistrate Judge Smyser)

ORDER

November 3, 2005

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On August 8, 2005, Plaintiff Rasheed Suton Beyah, an inmate at the State Corrections Facility at Waymart, Pennsylvania, initiated this action by filing a civil rights complaint pursuant to 42 U.S.C. § 1983. On that same date Beyah filed an application to proceed *in forma pauperis*.

The Clerk of Court assigned this case to us and referred it to Magistrate Judge J. Andrew Smyser for preliminary consideration. On August 26, 2005, the Magistrate Judge issued an order denying without prejudice Beyah's application to proceed *in forma pauperis* because Beyah indicated that while incarcerated he had filed three or more prior actions in a court of the United States which had been dismissed as frivolous, malicious, or failed to state a claim upon which relief could be granted. In that order the Magistrate Judge allowed Beyah 30 days from the

date of the order to pay the entire \$250.00 filing fee to proceed with this case.

On October 13, 2005, the Magistrate Judge issued a report recommending that the complaint be dismissed because Beyah had not paid the filing fee. The time allowed for the parties to file objections to the Report and Recommendation expired on October 31, 2005, and to this date no objection has been filed. When no objections are filed to the report of a Magistrate Judge, we need only review that report as we in our discretion deem appropriate. *Thomas v. Arn*, 474 U.S. 145, 151-52 (1985).

Title 28 U.S.C. § 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury..

28 U.S.C. § 1915(g). In his application to proceed *in forma pauperis* Beyah answered "no" to the question of whether he seeks relief in this case because he is under imminent danger of serious physical injury. (*Application to Proceed In Forma Pauperis*, p. 1, ¶3.(a))

Under the circumstances of this case, Magistrate Judge Smyser properly required Beyah to pay the full filing fee in order to proceed with this action. Our review of this case

confirms the Magistrate Judge's conclusion that this action should be dismissed for Beyah's failure to pay the full filing fee within the time allowed by the Magistrate Judge's order of August 26, 2005.

We will adopt Magistrate Judge Smyser's report and recommendations *in toto* because they are free from error and no objection to them has been filed.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Magistrate Judge Smyser's report and recommendation (Document 8) dated October 13, 2005, is adopted *in toto*.
2. The complaint is dismissed because Beyah has failed to pay the filing fee within the time allowed and he is barred from proceeding *in forma pauperis*.
3. The Clerk of Court shall close this case.

s/Malcolm Muir
MUIR, U.S. District Judge

MM:ga